

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2064 Sharp-Collins – As Amended April 9, 2026

SUBJECT: DISCRIMINATION: CRIMINAL HISTORY

KEY ISSUE: SHOULD “CRIMINAL HISTORY,” AS DEFINED, BE ADDED TO THE LIST OF PROTECTED CHARACTERISTICS IN THE UNRUH CIVIL RIGHTS ACTS AND THE FAIR EMPLOYMENT AND HOUSING ACT?

SYNOPSIS

Several existing statutes prohibit discrimination on the basis of certain “protected characteristics.” Most notably for purposes of this bill, the Unruh Civil Rights Act prohibits a business establishment from denying any person full and equal accommodations based on the person’s sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. The Fair Employment and Housing Act (FEHA) prohibits discrimination in employment and housing on the basis of race, religion, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status.

This straightforward bill adds “criminal history” to the list of protected characteristics in both the Unruh Act and FEHA. According to the author people who leave prison with criminal records have difficulty reentering society and adjusting to life when they are released. Essential to successful reentry is the ability to obtain employment, housing, and business opportunities. The author believes that adding “criminal history” to the Unruh Act and FEHA will protect people with criminal records, including formerly incarcerated people, as they seek to rebuild their lives.

The bill is supported by several legal aid, civil rights, prisoner rights, and other social justice groups. It is opposed by the California Chamber of Commerce and regional property owner associations who fear that it will expose employers and landlords to civil liability and make workplaces and residential units less safe.

SUMMARY: Adds “criminal history,” as defined, to the list of protected characteristics under the Unruh Civil Rights Act and the Fair Employment and Housing Act, and makes other conforming changes. Specifically, **this bill:**

- 1) Adds “criminal history,” as defined, to the list of protected characteristics under the Unruh Civil Rights Act and provisions of the Fair Employment and Housing Act.
- 2) Defines “criminal history” for purposes of the Unruh Civil Rights Act to mean a documented record of criminal offenses for which a person has been arrested, charged, convicted, incarcerated, or referred to a pretrial or posttrial diversion program.

- 3) Defines “criminal history” for purposes of the Fair Employment and Housing Act to include any record of an individual’s involvement with the state or federal criminal legal system, including being arrested, charged, convicted, records that have been sealed, pardoned, dismissed, expunged, statutorily eradicated, set aside, or otherwise resolved, as well as referral to a pretrial or posttrial diversion program or any juvenile court adjudication or action.
- 4) Specifies, for purposes of the employment provisions of the Fair Employment and Housing Act, that including “criminal history” as a protected characteristic does not prohibit an employer from denying an applicant a position of employment or terminating a current employee, if the employer determines, based on an individualized assessment under the Fair Chance Act, that the applicant’s or employee’s criminal history disqualifies the applicant or employee from the relevant position. The employer shall provide the applicant or employee with a written notice that explains the employer’s reasoning and gives the applicant or employee at least five business days to respond to the notice before the employer may make a final decision.

EXISTING LAW:

- 1) Prohibits discrimination in employment and housing on the basis of certain protected characteristics, including discrimination based on race, religion, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. (Government Code Sections 12940 and 12955.)
- 2) Makes it an unlawful employment practice under the California Fair Employment and Housing Act (FEHA), except as specified, for an employer with 5 or more employees to (a) include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant’s conviction history; (b) consider the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant, or (c) distribute information about an arrest not followed by conviction, referral to or participation in a pretrial or posttrial diversion program, or convictions that have been sealed, dismissed, expunged, pardoned, or otherwise eradicated. (Government Code Section 12952 (a).)
- 3) Requires an employer that intends to deny an applicant a position of employment solely or in part because of the applicant’s conviction history to make an individualized assessment of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position considering specified factors. (Government Code Section 12952 (c).)
- 4) Provides, under the Unruh Civil Rights Act, that all persons within California are entitled to full and equal accommodations in all businesses regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (Civil Code Section 51.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author, formerly incarcerated individuals and other persons with criminal histories “face systematic disenfranchisement that often prevents them from smoothly rejoining society. The stigma attached to incarceration can limit access to jobs, housing, and business opportunities. AB 2064 allows formerly incarcerated individuals to confidently step into the next chapter of their life by adding criminal conviction history to the lists of protected classes under California law. Thus, extending legal protection for these individuals to ensure they have access to advancement opportunities.”

Facilitating successful “re-entry” of formerly incarcerated persons. In recent years various California agencies have established programs to help persons coming out of the state’s prisons to successfully integrating back into the community. According to a 2024 report by *Cal Matters*, the California Department of Corrections and Rehabilitation (CDCR) oversees twelve “re-entry centers” throughout the state that help former inmates become self-sufficient after they get out of prison. According to *Cal Matters*, “for the 2023 to 2024 fiscal year, California spent almost \$112 million on the male re-entry program, and almost \$28 million on its female counterpart. For 2024 to 2025, the budget for the program for men is almost \$81 million, while the budget for the women’s program will increase to almost \$35 million.” This money is likely well spent, because data suggests that these programs help reduce recidivism, ultimately saving the state money. (See “California to expand re-entry programs for formerly incarcerated individuals,” *Cal Matters* (May 1, 2024), available at <https://calmatters.org/economy/2024/04/re-entry/>.) Other state efforts to facilitate successful re-entry include “Project Rebound,” a program initiated by the California State University (CSU) to support higher education and successful reintegration of formerly incarcerated individuals wishing to enroll at a California State University campus. (See <https://www.calstate.edu/impact-of-the-csu/student-success/project-rebound/>.) While these programs play an important role to successful re-entry, they can only go so far if a person’s criminal history prevents them from obtaining employment, housing, and business opportunities.

This bill seeks to facilitate successful re-entry by adding “criminal history” as a “protected characteristic” under FEHA and the Unruh Civil Rights Act. FEHA prohibits discrimination in employment and housing on the basis of certain protected characteristics, including discrimination based on race, religion, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. The Unruh Civil Rights Act (Civil Code Section 51) makes it unlawful for a “business establishment” to deny any person “full and equal accommodations” on the basis of “sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.” (One will note that the lists are similar, but not identical.) This bill adds “criminal history” to the list of protected characteristics in both statutes.

Although the bill as introduced would have added the phrase “formerly incarcerated person” to each list of protected characteristics, as recently amended the bill adds “criminal history.” The bill defines criminal history for purposes of the Unruh Civil Rights Act to mean “a documented record of criminal offenses for which a person has been arrested, charged, convicted, incarcerated, or referred to a pretrial or posttrial diversion program.” The bill defines “criminal history” for purpose of FEHA to mean “any record of an individual’s involvement with the state or federal criminal legal system, including being arrested, charged, convicted, records that have been sealed, pardoned, dismissed, expunged, statutorily eradicated, set aside, or otherwise resolved, as well as referral to a pretrial or posttrial diversion program or any juvenile court

adjudication or action.” It is not entirely clear why “criminal history” is defined slightly differently in each statute. *If the bill moves out of this Committee, the author may wish to use the same definition in each statute.*

The bill also specifies in the employment provisions of FEHA that making “criminal history” a protected characteristic does not prohibit an employer from denying an applicant a position of employment or terminating a current employee, if the employer determines, based on an individualized assessment, that the applicant’s or employee’s criminal history disqualifies the them from the relevant position. This provision aligns the bill with the California Fair Chance Act, which generally prohibits employers from rejecting an applicant for employment solely or in part based the applicant’s “conviction history,” unless the employer conducts an individualized assessment and concludes that the conviction history has a direct and adverse relationship to the specific job duties, sufficient to justify denying employment to the applicant.

Is “criminal history” an appropriate candidate for a “protected characteristic?” When the Unruh Act and the predecessors of FEHA were first enacted in 1959 and 1963, respectively, they primarily sought to protect persons from racial and religious discrimination, though shortly thereafter “sex” was added. Over the years the list of protected characteristics has expanded to include other categories, such age, gender, sexual orientation, and disability. What united these early classifications is that they were supposedly “immutable,” and the additions apparently reflected a belief that a person should not be discriminated against for things they do not choose or control. However, as the Legislature added to the list, not everything on it can still be deemed “immutable.” Although a “religion” is not immutable, its early inclusion in the list likely reflects the constitutional and historical significance attributed to religion and the fact that, to some extent, people are born into a religion. However, many of the added classifications are clearly not “immutable.” For example, both “marital status” and “veteran or military status” have been added even though they are something that people generally choose to do. More recently the Legislature added “reproductive health decision-making,” which by definition entails a choice and not an immutable condition. It would seem that one’s “criminal history” is also not immutable, but rather the result of a series of choices that one has made. While marriage, military status, and reproductive health decision-making are also choices, they are generally choices that the government hopes to encourage or at least permit. The same cannot be said for criminal conduct, which by definition is discouraged and prohibited. Perhaps a better way to think of the protected characteristics, then, is not that they are immutable, but that persons with those characteristics have historically faced discrimination. This can certainly be said for persons with a criminal history, even after they have paid their debt to society.

Relation to AB 2095 and the Fair Chance Act. The Committee is also scheduled to hear AB 2095 (Lee, 2026). Like this bill, AB 2095 seeks to protect persons from discrimination based on their criminal record. However, AB 2095 focuses only on employment discrimination, and achieves it by strengthening the California Fair Chance Act rather than creating a new protected characteristic. This bill, AB 2064, will have a much broader reach by making “criminal history” a protected characteristic under both the employment and housing provisions of FEHA, as well as under the Unruh Civil Rights Act. This bill is also broader in another way, because “criminal history,” as defined, is much broader than “conviction history.” For example, AB 2064 defines “criminal history” to include “arrests.” AB 2064, therefore, will protect persons who were arrested or charged, but not necessarily convicted or incarcerated.

ARGUMENTS IN SUPPORT: Latino Justice PRLDEF argues in support that “AB 2064 represents a crucial step toward ensuring that a person’s past does not indefinitely dictate their future. By establishing conviction and arrest records as a protected class, this bill addresses the systemic barriers that disproportionately impact Black and Latino communities.” Latino Justice maintains that the bill expands “anti-discrimination protections beyond hiring to include housing rentals, commercial leases, professional licensing, and financial lending.” Latino Justice maintains that it affords this protection while still maintaining “the right of employers and housing providers to conduct individualized assessments.”

The Church State Council supports AB 2064 because it will “prohibit discrimination in housing, employment, public accommodations, and other areas based on a person's prior incarceration, helping to dismantle persistent barriers that hinder successful reentry into society. This measure represents a step toward justice by amending the Unruh Civil Rights Act to include "formerly incarcerated status" as a protected characteristic. By extending these essential protections, AB 2064 promotes fairness, reduces recidivism through greater access to opportunities, and recognizes that individuals who have served their time deserve a genuine second chance without facing ongoing stigma and exclusion.”

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce writes in opposition:

California already maintains a comprehensive statutory framework governing the consideration of criminal history in hiring decisions through the Fair Chance Act (Gov. Code § 12952; Cal. Code Regs., tit. 2, §§ 11017.1–11017.2) notice requirements, and procedural safeguards to ensure applicants with criminal history are provided fair access to employment opportunities. The Fair Chance Act also specifically accounts for employers that are required to conduct background checks by law or cannot legally hire people with certain prior convictions, which AB 2064 does not do. By layering additional liability provisions within FEHA AB 2064 creates overlapping and potentially conflicting compliance obligations and creates new litigation exposure. This increases uncertainty for employers attempting to navigate an already complex regulatory landscape.

While we support policies that promote workforce participation and rehabilitation opportunities, by creating a new protected class, AB 2064 will inadvertently increase litigation exposure and impact hiring decisions. This will be due, in part, to uncertainty regarding how criminal history may be evaluated consistently with business necessity and workplace safety obligations. We respectfully encourage an approach that instead preserves the existing balanced framework under current law while ensuring employers retain clear, workable standards that support both fair hiring opportunities and compliance certainty.

The California Landscape Contractors Association opposes this bill because it would “prohibit employers from discriminating against individuals based on their status as formerly incarcerated. Individuals with a criminal record who have served their time would receive protections similar to those afforded to other protected classes, including sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, and immigration status.” While CLCA understands “the importance of supporting the civil rights of their employees and the customers they serve,” they nonetheless oppose the bill “because it prevents employers from considering criminal histories,

including violent or felony convictions, which are critical for assessing safety and liability risks on job sites.” CLCA adds that the bill “creates new litigation exposure. . . even for unintentional hiring decisions, adding legal and administrative burdens for small- and mid-sized contractors.” Finally, CLCA notes that the landscaping industry is the “labor-intensive industry that relies on dependable crews and tight project schedules, these restrictions could complicate hiring, reduce productivity, and increase operational risk.”

REGISTERED SUPPORT / OPPOSITION:

Support

All of US or None (HQ)
Anti-recidivism Coalition
Black American Political Association of California, Sacramento Chapter
California Teachers Association
Californians for Safety and Justice
Center for Employment Opportunities
CFT– a Union of Educators & Classified Professionals
Church State Council
Forestry and Fire Recruitment Program
Justice2jobs Coalition
LA Defensa
Latino Justice PRLDEF
Legal Aid At Work
Legal Services for Prisoners With Children
Silicon Valley De-bug
The W. Haywood Burns Institute
Viet Voices

Opposition

Apartment Association of Orange County
California Chamber of Commerce
California Landscape Contractor's Association
East Bay Rental Housing Association

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